

2006 STATE OF THE JUDICIARY
Chief Justice Christine M. Durham
January 16, 2006

President Valentine, Speaker Curtis, distinguished members of the Senate and House of Representatives, I thank you for the invitation to deliver these remarks on behalf of our dedicated judges and staff from across this wonderful state of ours. I am pleased to have my colleagues, Associate Chief Justice Michael Wilkins, Justices Durrant, Parrish, and Nehring, and our state court administrator, Dan Becker, with me this afternoon.

Every day the morning news reminds us that we truly do live in a global environment, a fact that has economic, cultural, and public policy implications. The challenges we face in our country are many, but for the most part, as they relate to government, they concern the operation of a stable form of government and the realization of the promise of our constitution. As we observe the struggles taking place around the world, where people are desperately trying to establish and apply democratic principles, to embrace the rule of law, and to create effective government, we should all be reminded as we read the morning paper of just how much we take for granted in our country.

Much of the world's attention these days is focused on the struggles in the Middle East, particularly Iraq. Watching the evening news footage of the trial of a

deposed dictator and his chief lieutenants, we witness the presiding judge struggling to maintain order and conduct a judicial proceeding that is both fair and credible to the people of his country, and by extension, to the world. No small task. But, even as news reports draw our attention to the most difficult struggles abroad, we should not lose sight of very real success stories.

I would like to share with you an emerging success story from Mongolia. Just over a year ago the President of Mongolia, Natsaglin Bagabandi, visited Washington D. C. to meet with President Bush and share the progress being made in this new democracy. Strikingly, President Bagabandi singled out judicial reform as the most important development in the new, democratic Mongolia. Of particular interest to us is the fact that Mongolian legal, political, and judicial representatives spent some time in Utah, under the auspices of the National Center for State Courts, studying our judicial system. The Center's Mongolia project is viewed as its most successful international rule of law effort. It turns out that Mongolia not only adopted a judicial system modeled on Utah's but also implemented our Judicial Council format and details of our operation, right down to our committee structure.

When our visitors were asked what most impressed them about what they had seen here, the response was that we are an example of courts doing business in the open. They admired the way our Judicial Council operates—with notice, public meetings, press attendance, frequent attendance of legislative staff, and

public votes, and they concluded that our model would contribute to their own efforts to create a robust governance process deserving of public trust and confidence.

I would add as a footnote to this story that a number of Utah judges have been called on to teach about our system and the rule of law in Ukraine, including my colleague on the Supreme Court, Associate Chief Justice Wilkins.

Playing some part in these success stories is a source of great pride to our courts and our state. It is our own sense of pride in and respect for our form of government that continues to inspire people around the world. Those of us in positions of public leadership have a special duty to encourage and enhance respect for government, and as public servants we must recognize that public trust and confidence is not bestowed as a matter of course, but must be earned.

Part of our obligation in this regard is to remind ourselves and our citizens about what we take for granted, and what Mongolia is working to build: a government founded on the rule of law.

I would like to share with you what the judicial branch of government is doing to try to strengthen trust and confidence in our system. In previous years I have mentioned our support of civic education in Utah's schools, colleges, and universities. Recently, the courts along with more than twenty other groups (who form the Coalition for Civic, Character, and Service Learning) sponsored the third annual Dialogue on Democracy, two days of public programming devoted this

year to discussion about religious liberty and public life. Judges and court staff organized in-court experiences with school teachers and student leaders from many parts of the state designed to demonstrate the part played by the courts in our civic life. In the written evaluations of the session devoted to the courts in Utah, teachers identified numerous insights and ideas acquired from the process. Here are some of their comments: “[the] Judicial [branch] is the least known and understood. These presentations were important;” “[the] resources of [the] Courts [are] available to teachers;” “[I gained] renewed appreciation for living in a country where [the] judicial process works like it does;” “[I] will teach more about the court system;” “I will include this information in my constitution unit;” and finally, my favorite, “Classrooms are laboratories for freedom.”

This very successful project on civic engagement has been so successful because it is collaborative: numerous government and community leaders play important roles: several legislators participated in the Dialogue, and Representative LaVar Christensen and Senator Karen Hale are members of the Coalition; the Governor supported the Dialogue by declaring November 17 “Civic, Character, and Service Learning Day,” and the State Office of Education has retained a specialist in civic education who now oversees the work in the public schools and provides staff support for the Coalition.

Another example of collaborative efforts in the public interest is the work of the Judicial Council’s Committee on Children and Family Law, which brings

together knowledgeable people throughout government and the private sector to address public needs, including a number of legislators. Senator Lyle Hillyard, for example, has served on this committee from its inception. Recently, through the significant efforts of Senator Greg Bell, who worked with a subcommittee on warrants in child welfare cases, thoughtful solutions have been identified for some difficult problems, and I understand that a resulting piece of legislation has widespread support. What a wonderful example of thoughtful information-gathering and collaborative policy discussion leading to effective legislative work that is likely to solve problems, benefit our people, and, incidentally, avoid, we all hope, challenges to the end result.

As reflected by the role of the Committee for Children and Family Law, the courts, while not having direct policy-making responsibility themselves, can often serve as the “convening entity” for community-wide discussions that implicate public and private decision-making. Two more examples come to mind. The original Task Force on Racial and Ethnic Fairness, organized by the courts, was a broad-based effort to bring the courts, law enforcement, state and local legislative representatives, leaders in minority communities, service providers, and citizens together in a forum where communication and problem-solving could occur. The value of that effort and its ongoing importance to the state has been acknowledged by Governor Huntsman, whose budget this year proposes to give the task force a stable home in the executive branch.

A second example of community-wide collaboration at the invitation of the courts concerns a set of issues I mentioned in my remarks to you last year: the needs of Utah children in foster care. With the help of former Governor Olene Walker, I have invited a truly remarkable group of public and private leaders in this state to figure out what can be done to achieve for these children some of the things that the rest of our children take for granted, things like stability and permanence in their family relationships, caring and responsible adults to shelter their childhood and guide their journey into young adulthood, educational support, health and mental health treatment, even driver's licenses when they turn sixteen! We have called our effort, appropriately, IOU - Initiative on Utah Children in Foster Care. The initiative is currently working specifically on federal and state funding issues, transitions to adult living, community support for kin-ship care placements, and public awareness about the child welfare and foster care systems. I have been overwhelmed by the work of Initiative members—and these are very busy, very effective community leaders. As examples, our membership includes: from the government sector, the heads of the Department of Human Services, the Division of Child and Family Services, and the Department of Work Force Services, and the Commission on Criminal and Juvenile Justice, the Governor's legal counsel, the Attorney General, Chris Bleak, Speaker Curtis' Chief of Staff, Ric Cantrell of President Valentine's staff, Senator Dan Eastman, Representative David Litvak, Congressman Chris Cannon, Senator Orrin Hatch's Utah legal counsel, two

juvenile court judges, and Court of Appeals judge William Thorne, who was part of the PEW Commission's national task force on children in foster care.

Other public sector members are President Michael Young of the University of Utah, who has identified this work as an important way to contribute to the community, the State Superintendent of Public Education, and the director of Ute Tribal Social Services. From the business community, Steve Scott of Zions Bank has brought invaluable resources, and the advocacy communities are represented by the heads of Allies with Families and Voices for Utah Children, as well as long-time advocate for Utah's needy, Pamela Atkinson. We have also sought and received wonderful support from Utah's religious leaders; Bishop George Niederauer of the Catholic Diocese, Reverend France Davis from Calvary Baptist Church, and Elder Merrill Bateman from the Church of Jesus Christ of Latter-Day Saints have been major sources of ideas and plans, as has Lisa Eccles from the Eccles Foundation, and Dr. Tom Metcalf, long-time advocate for children and their healthcare needs. I have shared this long list of amazing people because I believe our work represents the talent and the resources that our community can bring to bear on critical problems that need to be addressed—and can be fixed.

Perhaps a brief incident from a recent meeting of the initiative will help to explain why so many busy people are willing to use their resources and influence for positive change. We invited four young people, one still in foster care, and three other recent “graduates” of the program, to talk to us about their experiences.

One of them was asked about the kind of support he had received as he moved out on his own, an 18-year-old adult responsible for his own life. “Did you receive calls to check up on you or to offer support or advice?” “No,” he replied, “for whatever reason, I didn’t. It would be nice, you know, to get a phone call once in awhile, to know somebody cares about you-like on your birthday, or something.” Here sat a young man so alone in the world that no one remembered his birthday and his phone never rang. There weren’t very many dry eyes in the room, and at least five initiative members quickly asked for his phone number. This young man’s story reminded us all of the human side of the issues we are struggling with.

It is likewise that human element that is so important in one final area I’d like to mention in which the courts have used our ability to “convene” community efforts. This is something I have mentioned in years past, and something that the legislature and the Governor have actively supported: problem-solving courts. Building on our considerable success with the drug court model, we have been expanding our efforts to focus on outcomes for people in certain kinds of cases rather than merely on disposition of cases. According to a recent report from the Coalition for Juvenile Justice, 50-75 percent of adolescents involved in the juvenile justice system have diagnosable mental disorders, while 20 percent have serious mental health problems. Close to home, our own information indicates that more than 1,200 young people in Utah’s juvenile justice system each year show signs of severe mental disorders. This Wednesday, a Mental Health Court pilot project will

officially begin in Third District Juvenile Court Judge Dane Nolan's courtroom at the West Jordan Courthouse. This will be one of the first courts of its kind in the nation. The court will work in partnership with Valley Mental Health, the Salt Lake County District Attorney's office, contract defense counsel, the Salt Lake County Division of Substance Abuse Services, Jordan School District, Salt Lake County Division of Mental Health, Utah Department of Human Services, the Division of Juvenile Justice Services, the National Alliance for the Mentally Ill, and Juvenile Justice Advocates. The hope is that coordination of services, treatment, and judicial supervision of young people in trouble whose problems include serious mental health issues will result in better outcomes for the children, for their families, and for the community.

The kind of innovative culture that some of these programs reflect can only thrive in systems that are well managed. I have described on these occasions in the past the singularly efficient and responsive governance structure that Utah's judicial branch enjoys, with our elected Judicial Council to determine policy, our boards of judges to keep information flowing and to assess need and progress, and our highly professional administrative staff at every level. That structure was put in place twenty years ago with the significant 1985 amendments to the judicial article of our constitution, and it has served us well.

All of government exists to serve the people, and it is important to make room for the voice of the public in our deliberations. I have already described

many of our efforts to reach out to the larger community, and to the other branches of government as we assess the way we do things and consider how we might do them better. I am consistently amazed at and grateful for the generosity of people from outside the judiciary who contribute their time and their talent to improving the administration of justice. The countless hours of volunteer work on Supreme Court rules committees and Judicial Council rules, and on Judicial Council Committees and task forces are one example. Other recent examples are worth mentioning. As the Judicial Council has focused this past year on the Office of the Guardian Ad Litem, we have, in accord with a recommendation made by your Auditor General, put in place an extraordinarily able group of citizens, lawyers, and non-lawyers, to serve on an Oversight Board for the Guardian's Office. They bring a broad range of legal, child-welfare and public policy expertise to their task, and they all serve as volunteers, with nothing to gain but the best possible management and function of that important office. Feedback so far on their effectiveness has been very positive, and we appreciate the role that your work in the legislature has informed our planning.

One final example of citizen service is the Council's Citizen Committee on Judicial Compensation, which undertook an independent assessment and analysis of judicial compensation for the use of the Legislature's Commission on Executive and Judicial compensation. Once again, I am grateful that people like attorney Kay Cornaby, who chaired the committee, Ralph Akin from St. George, an attorney and

businessman, and Scott Anderson of Zions Bank, have been willing to spend their time and expertise on an issue they believe has an impact on the future of Utah's judiciary. We are fortunate in this state, and we in the judiciary particularly, to be supported in our work by so many able people of good will who respect government and will lend their credibility and expertise to that work.

It is appropriate to complete this brief overview by telling you a little about what is on our agenda as we move forward into the new year. The Judicial Council is in the process of finalizing a series of measurement indicators that will allow us to gauge our progress in key areas. I would describe these core measures as analogous to the gauges in your car—"dashboard indicators"—to let us assess at regular intervals if we're moving in the right direction and at the right speed; for example, we have already been focusing on time-to-disposition numbers for cases in the trial courts with very encouraging results. We continue to address, as does the rest of state government, the challenging issues posed by privacy concerns and public records. Also, along with the rest of state government, we are acutely aware of needs related to security, disaster preparedness and disaster recovery, and we have formed excellent working relationships with the Department of Public Safety and the Division of Homeland Security to work on those needs.

One other systemic concern is very high on the Judicial Council's agenda: the changing nature and role of Utah's Justice Courts. Three fourths of all cases in Utah's courts are filed in the justice courts; their impact on our citizens is

enormous. The Judicial Council will be spending time in the coming year examining ways in which we can further strengthen these courts and contribute to enhanced public trust and confidence in their work.

This notion of trust in the courts is, of course, closely related to what the public, and the other branches of government, know and understand about the judicial branch and how it works. I have mentioned our efforts to govern ourselves in terms of operations and budgets in a very public, transparent way. But what goes on in individual courtrooms throughout the state is a huge part of the picture, and that part is harder to explain. We have been very grateful for the efforts of many legislators, including President Valentine and Speaker Curtis, to attend meetings of our boards of judges to talk about issues of mutual concern. Also extremely valuable have been court visits by individual legislators. Just last month Representatives Hogue and Harper, for example, devoted personal time to sitting in on various aspects of delinquency and child welfare cases, including mediations and case conferences, in the juvenile court. We hope that everyone who has participated in such an experience would tell you that they have gained an enhanced understanding of the process and about the difficult policy dilemmas they face in crafting relevant legislation. We invite every one of you to come to court; let us know when you can come, and what you'd like to see, and we will ensure that arrangements are made. For those of you who cannot manage a personal visit, we hope you will ask for "debriefings" from your colleagues who do.

For good or ill, the issues and problems your constituents and society at large encounter end up, in some form or another, in our courtrooms, and we welcome and want to support your opportunities to see how they play out in that forum. We appreciate the engagement of your leadership and of so many legislators on court-related committees and projects, and the interest and support of the Governor and many executive branch agencies. Respect for government cannot be maintained without responsible government. We in the courts will continue to strive to be accountable to the people we serve by ensuring fairness, access, and openness, by listening to the public's expressions of need and feedback on our work, by using public resources efficiently, and by explaining effectively why courts are essential in a fair and impartial democracy.

In my opening remarks, I used the phrase "the realization of the promise of our constitution." My use of the word "promise" in this context comes from a woman who is remembered as being both elegant and plain spoken, often at the same time. The late Congresswoman from Texas, Barbara Jordan, once said, "What the people want is simple. They want an America as good as its promise."

I pledge to you that our courts will continue our efforts to provide the people what they want—we will continue to strive for courts as good as their promise of fairness, access, equal justice and efficiency.

We value our opportunities to work with you in this important enterprise, and look forward to a productive 2006.